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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,198	07/18/2003	Carlos Duarte	50229/MEG/F314	4042
23363	7590	06/01/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			KYLE, MICHAEL J	
PO BOX 7068			ART UNIT	PAPER NUMBER
PASADENA, CA 91109-7068			3676	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/622,198	DUARTE ET AL.
	Examiner	Art Unit
	Michael J Kyle	3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 March 2005.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 3 is/are allowed.
- 6) Claim(s) 1, 2, and 4-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide for the claim terminology “to prevent relative rotational movement between the support arm and the spa cover”.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, and 4-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claims 1 and 6 recite the newly added negative limitation “to prevent relative rotational movement between the support arm and the spa cover”. The specification does not provide support for this limitation.

4. Claims 2, 4, 5, and 7-12, depend from rejected claims 1 and 6 and include all of the limitations thereof. For this reason, these claims are also rejected.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 2, and 4-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 6 recite the limitation “to prevent relative rotational movement between the support arm and the spa cover”. This limitation appears to contradict applicant’s disclosure, as portion (102) of the spa cover appears to rotate relative to the support arm (see figure 8). It is unclear whether the spa cover is to rotate relative the support arm or not.

#### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4, 6, 7, 13, and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes (U.S. Patent No. 6,000,071) in view of Perry (U.S. Patent Application Publication 2002/0050003). With respect to claims 1, 2, 4, 6, and 7, Fettes discloses a hinge assembly for a spa cover comprising a mounting bracket (60) installed near a top of a spa, a slide bracket (80) and a support arm (70) fixedly attached to the spa cover and pivotably coupled (at 88) to the slide bracket. The slide bracket (80) has two ends, where the end near the pivot point (88) is moved in an upward direction as the slide bracket is slidably extended from the mounting bracket. Additionally, the mounting bracket comprises two side plates (62, 64) connected via a web (web

between 60A and 60B, shown in figure 2), and one of the side plates (62) has a hole (74) used to slidably couple the slide bracket (80) to the mounting bracket. Examiner asserts that the connection at 74 allows for the other end (80B, in figure 3) of the slide bracket to slide in the mounting bracket. The hinge assembly is mounted on a spa (10) and a foldable spa cover (16). Fettes does not disclose the support arm attached to the spa cover to prevent relative rotational movement.

9. Perry discloses a hinge for a spa cover comprising a support arm (118) fixedly attached to a spa cover portion (26). The support arm is attached in such a way as to prevent relative rotation between the spa cover and the support arm. Eliminating any swing motion of the cover during removal will increase the ease with which the cover is removed. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes as taught by Perry, such that the spa cover is attached to the support arm to prevent relative rotation between the two, in order to increase the ease of removal of the cover.

10. With respect to claims 13 and 18, Fettes discloses a method where the spa cover (16) is removed from the spa (10) by sliding the spa cover towards a rear end of the spa (occurs as 80 slide in 60), folding the spa cover into two substantially equal sections (see figure 1), and rotating the spa cover (16, see figure 4). Additionally, the spa cover (16) is rotated so as to cover the spa about half way (when replacing the cover on the spa).

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Perry, as applied to claim 6 above, and further in view of Duarte et al ("Duarte", U.S. Patent No. 6,442,799). Fettes and Perry fail to disclose the support arm to be attached to the spa cover by a metal plate disposed on the outside of the spa cover.

12. Duarte teaches a spa cover hinge assembly that includes a support arm (50) that is attached to a spa cover (130) by a metal plate on the outside of the spa cover (see figure 8). This arrangement significantly reduces the amount of material, and thus manufacturing costs, required to fasten the support arm to the spa cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes and Perry as taught by Duarte in order to reduce the amount of material, and thus manufacturing costs, to attach the support arm to the spa cover.

13. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Perry and Duarte as applied to claim 9 above, and further in view of Reiker (U.S. Patent No. 6,423,899). Neither Fettes, Perry, nor Duarte disclose the metal plate to be affixed to the spa cover by double-sided tape.

14. Reiker teaches a metal plate (24) that is secured to a support by double-sided tape (140). Reiker secures the plate with double sided tape so that the plate may be at least temporarily located on the support (column 3, lines 31-36). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes, Perry, and Duarte as taught by Reiker to at least temporarily secure the metal plate to the spa cover. This would allow for adjustment of the location of the metal plate prior to fastening the plate on the spa cover with screws.

15. With respect to claim 11, Duarte teaches the plate to have a hole formed therein that receives a screw, such that the screw is anchored in the spa cover by rotating the screw.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Perry, Duarte and Reiker as applied to claim 11 above, and further in view of Ito (U.S. Patent No. 6,139,236). None of Fettes, Perry, Duarte, or Reiker discloses a deformable anchor engaged with screw.

17. Ito teaches fastening arrangement where a screw (15) is engaged with a deformable anchor (10), wherein the anchor is deformed and embedded inside a board as the screw is rotated. The anchor of Ito permits objects to be fastened a wall of fragile material. The board (21) is analogous to the spa cover of the present invention. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes, Perry, Duarte, and Reiker, as taught by Ito, so that the supporting arm may be fastened to the spa cover with damaging the spa cover.

18. Claims 14-17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Eckel (U.S. Patent No. 3,961,723). Fettes fails to disclose the rear edge of the spa cover to be lifted as the cover is slid toward the rear.

19. Eckel teaches a cover for a receptacle where the cover (12) is slid rearward (see figure 2), and rotated (see figure 3). As the cover is slid toward the rear, the cover is lifted from the receptacle. The sliding takes place prior to the rotating of the cover. Additionally, the rear edge of the cover is moved downward as the cover is slid toward the front of the receptacle. The rotation of the cover back onto the receptacle takes place before the sliding of the cover. Eckel uses this arrangement so that user may avoid having to lift the cover at any time (column 1, lines 7-9). It would have been obvious to one having ordinary skill in the art at the time of the

invention to modify the Fettes as taught by Eckel in order to provide a cover in which a user may avoid having to lift at any time. The result of such a combination would incorporate the structure that allows the sliding and rotating in Eckel, into Fettes. Fettes would still provide the spa and spa cover structure, where the spa cover is folded in substantially in half.

20. Regarding claims 16 and 17, the combination of Fettes and Eckel shows the sliding of the spa cover toward the rear of the spa takes place prior to the folding of the spa cover, and the folding of the spa cover takes place prior to the rotating of the spa cover (shown in Fettes).

*Allowable Subject Matter*

21. Claims 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and the 35 U.S.C. 112 1<sup>st</sup> and 2<sup>nd</sup> paragraph rejections are overcome.

22. Claim 3 is allowed.

*Response to Arguments*

23. Applicant's arguments with respect to claims 1, 2, 4, 6, 7, 13, and 18 have been considered but are moot in view of the new ground(s) of rejection. These claims are now rejected by the combination of Fettes and Perry. The new grounds of rejection were necessitated by applicant's amendment to the claims.

24. With respect to claim 13, applicant argues that Fettes does not disclose the step of sliding of the cover. Examiner respectfully disagrees. Examiner asserts that any given point on the cover

of Fettes will translate in a horizontal direction relative to the spa during removal of the cover. Examiner considers this horizontal translation to be sliding.

25. With respect to claims 14-17, 19 and 20, applicant argues that there is no suggestion or motivation to combine Fettes and Eckel. Examiner respectfully disagrees. The arrangement of Eckels is used so that a user does not have to lift the cover at any time (Eckel, column 1, lines 7-9). The combination results in the track mechanism of Eckel being implement into the spa and cover arrangement of Fettes. The removal of Fettes spa cover will identically resemble the removal of the cover of Eckel, with the except that Fettes cover will be folded in half.

### *Conclusion*

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

27. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.
29. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mk



ROBERT J. SANDY  
PRIMARY EXAMINER